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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,802	04/20/2004	Erin N. Rosskopf	0022.03	5070

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EXAMINER

STITZEL, DAVID PAUL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

OFFICIAL ACTION

Restriction/Election

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

1. Claims 1 and 14-17 are generic to a plurality of disclosed patentably distinct species of pesticide comprising: 1. iodoacetic acid; 2. bromoacetic acid; 3. 2-iodoacetamide; and 4. 2-bromoacetamide. Because each of the disclosed species and subspecies are patentably distinct, each from the other, restriction for examination purposes as indicated is proper.

Even though this requirement is traversed, Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species of pesticide (i.e., iodoacetic acid) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Currently, claims 1 and 14-17 are generic.

2. Claims 1-10 are generic to a plurality of disclosed patentably distinct species and subspecies of pest comprising: 1. fungi (*Fusarium*); 2. insects; 3. nematodes (*Meloidogyne*); 4. bacteria; and 5. weeds (*Amaranthus hybridus*; *Echinochloa crus-galli*; and *Cyperus rotundus*). Because each of the disclosed species and subspecies are patentably distinct, each from the other, restriction for examination purposes as indicated is proper.

*Even though this requirement is traversed, Applicant is required under 35 U.S.C. § 121 to elect not only a single disclosed species (i.e., weeds), but also a single disclosed subspecies (i.e., *Amaranthus hybridus*), for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Currently, claims 1-10 are generic.*

Conclusion to Restriction Requirement

Applicant is advised that a fully responsive reply to this requirement must include an explicit identification of not only a single disclosed pesticide (i.e., iodoacetic acid), but also a single disclosed species of pest (i.e., weeds) and subspecies thereof (i.e., Amaranthus hybridus), that is elected consonant with this requirement, and a listing of all claims, including any claims subsequently added thereto, which are readable upon the elected species and subspecies. An argument that a claim is allowable or that claims are not generic is considered nonresponsive unless accompanied by an explicit election of a specific species and subspecies. See 37 C.F.R. § 1.143.

Should Applicant traverse on the ground that the species are not patentably distinct, Applicant should submit evidence or identify such evidence now of record showing the species and subspecies to be obvious variants over one another or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103(a) of the other inventions.

If claims are added after the election, Applicant must explicitly indicate which claims are readable upon the elected species. See MPEP § 809.02(a). Amendments submitted after final rejection are governed by 37 CFR 1.116, whereas amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR § 1.48(b) if one or more of the currently named Inventors is no longer an actual Inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR § 1.48(b) and by the fee required under 37 CFR § 1.17(i).

Due to the complex nature of the instant restriction requirement, a written restriction requirement was necessitated. See MPEP § 812.01.

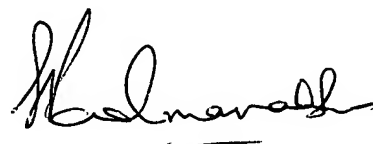
Contact Information

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David P. Stitzel, Esq. whose telephone number is 571-272-8508. The Examiner can normally be reached on Monday-Friday, from 7:30AM-6:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Sreenivasan Padmanabhan can be reached at 571-272-0629. The central fax number for the USPTO is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published patent applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished patent applications is only available through Private PAIR. For more information about the PAIR system, please see <http://pair-direct.uspto.gov>. Should you have questions about acquiring access to the Private PAIR system, please contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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